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two grantors, each liable as principal for one half and as surety for the other half, directed that the land of one grantor be first sold in enforcing the deed of trust, upon a sale of the land in satisfaction of the debt, the grantor would be entitled to show the relationship with his cograntee, and his right of subrogation would follow as a matter of substantial equity and right, and the lien would be kept alive for his benefit after the satisfaction of the debt.

[Ed. Note.—For other cases, see Subrogation, Cent. Dig. §§ 17, 77; Dec. Dig. § 7 (1).* 12 Va.-W. Va. Enc. Dig. 1003.]

5. Estoppel (§ 22 (2)*)—Estoppel by Deed—Provision in Mortgage.—In a deed of trust executed by two grantors, each liable as principal for one half the debt and as surety for the other, a provision that the land of one grantor be sold first in enforcement of the deed, although to some extent tending to show that the first grantor was the principal debtor, was equivocal and uncertain, and did not estop the first grantor from setting up that he was primarily obligated only as to one-half, as against subsequent creditors of his co-grantor, who sought no information of the first grantor, who made no representations to them, even as to creditors who extended credit to the cograntee on account of the provisions.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. §§ 30-45; Dec. Dig. § 22 (2).* 6 Va.-W. Va. Enc. Dig. 293.]

Sims, J., dissenting.

Appeal from Circuit Court, Augusta County.

Suit by Baugh & Sons Company against J. T. Black and others. From a decree sustaining an exception of named defendant to a commissioner's report, plaintiff appeals. Affirmed.

Quarles & Pilson and *A. C. Gordan*, all of Staunton, *Gardner L. Boothe*, of Alexandria, and *Wm. A. Pratt*, of Staunton, for appellants.

Jos. A. Glasgow, of Staunton, for appellees.

SOUTHERN RY. CO. v. BURFORD.

Nov. 16, 1916.

[90 S. E. 616.]

1. Master and Servant (§ 124 (3), 127*)—Master's Duty—Inspection—Simple Tools.—A master is under no obligation to his servants to inspect during their use those common tools and appliances with which every one is familiar, and is not bound to repair defects arising in the daily use of such tools and appliances.

[Ed. Note.—For other cases see Master and Servant, Cent. Dig. §§ 235, 252; Dec. Dig. § 124 (3), 127.* 9 Va.-W. Va. Enc. Dig. 674.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Master and Servant (§ 235 (13)*)—Assumption of Risk—Tools and Appliances.—Plaintiff holding a rail and turning it while others were cutting it with a cold chisel, and who claimed he did not see the frazzled edges of the head of the chisel, but who could have seen it had he looked, assumed the risk of dangers incident to his employment which were open and obvious, such as the danger of being struck by a sliver from the chisel, and could not excuse himself by his failure to look and see.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 718; Dec. Dig. § 235 (13).* 9 Va.-W. Va. Enc. Dig. 693.]

Error to Circuit Court, Amherst County.

Action by John Burford against the Southern Railway Company. Judgment for plaintiff, and defendant brings error. Reversed, and judgment entered, sustaining the demurrer to the evidence and dismissing the plaintiff's case.

Coleman, Easley & Coleman, of Lynchburg, and *Robert B. Tunstall*, of Norfolk, for plaintiff in error.

Wm. K. Allen, of Amherst, for defendant in error.

MILLBORO LUMBER CO., Inc. v. DONALD.

Nov. 16, 1916.

[90 S. E. 618.]

1. Master and Servant (§ 101, 102 (5)*)—Master's Duty—Appliances.—It is the master's duty to furnish the servant with reasonably safe appliances with which to perform the duty he is ordered to perform.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 180; Dec. Dig. § 101, 102 (5).* 9 Va.-W. Va. Enc. Dig. 674.]

2. Master and Servant (§ 256 (1)*)—Action for Injury—Sufficiency of Declaration.—Where a declaration in a servant's action for injury showed the relation between the plaintiff and defendant, the legal duty owing from the defendant to him, the defendant's breach of such duty, and resulting damages to the plaintiff, a demurrer thereto was properly overruled.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 603; Dec. Dig. § 809; Dec. Dig. § 256 (1).* 9 Va.-W. Va. Enc. Dig. 674.]

3. Trial (§ 252 (11)*)—Instructions—Evidence.—In a servant's action for injury, an instruction on the law of fellow servants was properly refused, where all the evidence showed that the one under whose order the servant was working was the agent and representa-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.